

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless, U-3060, U-4135 and U-4314, and related entities (collectively "Cingular") to determine whether Cingular has violated the laws, rules and regulations of this State in its sale of cellular telephone equipment and service and its collection of an Early Termination Fee and other penalties from consumers.

Investigation 02-06-003
(Filed June 6, 2002)

**JOINT RULING OF ASSIGNED COMMISSIONER AND
ADMINISTRATIVE LAW JUDGE AMENDING SCOPING MEMO
TO REVISE SCHEDULE (2nd REVISION)**

This ruling amends the scoping memo to revise the schedule but denies two pending motions, (1) the September 16, 2002 joint motion of the Commission's Consumer Protection and Safety Division (CPSD) and Utility Consumers' Action Network (UCAN) for waiver of the 12-month adjudication deadline and (2) the September 27, 2002 motion of Cingular Wireless (Cingular) for mandatory alternative dispute resolution.¹ Cingular filed a response to the CPSD/UCAN motion on September 27. The motions both concern the current

¹ The motions are entitled, respectively, *Joint Motion of the Utility Consumers Action Network and Consumer Protection and Safety Division for Waiver of the One-Year Rule; Supporting Declarations* and *Motion of Cingular Wireless for Assignment of an Administrative Law Judge for Alternative Dispute Resolution*.

schedule and in the interests of clarity and expediency, we address them together.²

Discussion

The CPSD/UCAN motion seeks to extend the deadline for distribution of these parties' prepared testimony by two weeks, from October 9 to October 23. The September 12 ruling of the administrative law judge (ALJ) granted CPSD's prior request for an additional two weeks and five days, from September 20 to October 9, 2002, and adjusted the remaining schedule. In requesting more time now, CPSD/UCAN essentially repeat the same arguments CPSD made previously. They attribute the need for more time to the continued, slow pace of discovery in this proceeding and the fiscal consequences of late approval of the State's budget, which prevented CPSD from hiring consultants earlier.

The chart below compares the current schedule with the CPSD/UCAN proposal. In addition to a two-week extension for distribution of their own prepared testimony, CPSD/UCAN propose that the schedule be revised to build in a week during which they would make their own witnesses available for deposition, add approximately a week to Cingular's prepared testimony due date, build in another week for deposition of Cingular's witnesses, defer the due date for concurrent rebuttal testimony by nearly two months, and defer evidentiary hearing by two months.

² Rule 45(h) of the Commission's Rules of Practice and Procedure permits a ruling on a motion before responses or replies have been filed.

Current Schedule	CPSD/UCAN Proposal	Event
October 9, 2002	October 23, 2002	Staff and intervenors distribute prepared testimony.
	October 28, 2002	Staff and intervenors make “prepared testimony” witnesses available for depositions.
November 22, 2002	December 23, 2003	Respondent distributes prepared testimony
	January 6-15, 2003	Respondents make “prepared testimony” witnesses available for deposition.
December 3, 2002	January 31, 2002	Staff and intervenors distribute prepared rebuttal testimony.
December 9-23, 2002 ³	February 10-19, 2003	Evidentiary Hearing

Cingular’s response opposes the schedule modifications unless conditioned upon adoption of some form of mandatory alternative dispute resolution (ADR) and unless the extension is fair to Cingular. Cingular argues that giving it one more week but burdening it with additional, on-going discovery in the form of the witness depositions does not balance a grant of two more weeks for CPSD/UCAN. Cingular’s motion for adoption of ADR asks the Commission to assign an ALJ as mediator to facilitate productive settlement

³ The ALJ’s September 12 ruling added three hearing days (December 19, 20 and 23) in order to accommodate a delay in the start of evidentiary hearing, if necessary.

negotiations. Cingular expresses frustration with the discovery process to date and states that though it provided CPSD with a written offer of settlement on August 5, 2002, CPSD continues to refuse to discuss settlement until the prepared testimony of all parties has been released.

We are aware that this proceeding has been beset by numerous, time-consuming discovery disputes involving not only the parties to this proceeding, but nonparties as well. We are not in a position to know, at this time, whether this investigation is one where settlement would be in the public interest. We do not think it unreasonable of CPSD (and UCAN) to wish to release their prepared testimony before assessing the settlement potential of their positions. Accordingly, we deny Cingular's motion for ADR and also reject Cingular's argument that any schedule modifications in response to the CPSD/UCAN motion should provide for ADR.

We are sympathetic to the request CPSD/UCAN make for a limited amount of additional time for distribution of their prepared testimony and will extend the date, as requested. CPSD/UCAN have not made a case for the other schedule changes they request, however. In particular, they have not explained why we should order two weeks of depositions after the prepared testimony has been released or why a month's time is required for preparation of rebuttal testimony. These two requests are the principle ones behind their request that the Commission add two months to the statutory 12-month timeline for resolution of adjudicatory proceedings. (See Pub. Util. Code § 1701.2(d).)

Prepared testimony is used at the Commission, in lieu of lengthy direct examination, as a means of establishing a party's position in advance of evidentiary hearing. Thus, a primary purpose of evidentiary hearing is the opportunity for opposing parties to cross-examine the witnesses sponsoring that

previously distributed prepared testimony. The parties may agree to additional discovery via such depositions, if they choose, but CPSD/UCAN have not shown why we should order it.

As the ALJ's September 12 ruling notes, the adjustments that ruling made to the schedule essentially stripped it of any "slack." Therefore, granting two more weeks to CPSD/UCAN now, has the effect of reducing Cingular's time from six weeks to four. We are unable to discern from Cingular's response to the joint motion whether or not that time is adequate for Cingular to prepare its defense. Most likely Cingular will be better able to make that assessment once the CPSD/UCAN testimony has been distributed. We make one other adjustment to the schedule to accommodate a scheduling conflict on the ALJ's calendar—we cancel evidentiary hearing on December 11, 2002. Accordingly, we deny the CPSD/UCAN motion for an extension of the 12-month deadline, but we amend the scoping memo to revise the schedule as provided below.

October 23, 2002	Staff and intervenors distribute prepared testimony
December 9, to be continued day to day on December 10 and from December 12 through December 23, 2002	Evidentiary Hearing, Commission Courtroom, 505 Van Ness Avenue, State Office Building, San Francisco, CA 94102

IT IS RULED that:

1. The September 16, 2002 Joint Motion filed by Consumer Protection and Safety Division (CPSD) and Utility Consumers' Action Network (UCAN) is denied, as discussed herein.
2. The September 27, 2002 Motion filed by Cingular Wireless for alternative dispute resolution is denied, as discussed herein.

3. The scoping memo is amended to revise the schedule to (a) extend the date for CPSD and UCAN to distribute their prepared testimony to October 23, 2002 and (b) revise the evidentiary hearing schedule to cancel hearing on December 11, 2002.

Dated October 3, 2002, at San Francisco, California.

/s/ CARL WOOD

Carl Wood
Assigned Commissioner

/s/ JEAN VIETH

Jean Vieth
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Joint Ruling of Assigned Commissioner and Administrative Law Judge Amending Scoping Memo to Revise Schedule (2nd Revision) on all parties of record in this proceeding or their attorneys of record.

Dated October 3, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

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